



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
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ATLANTA, GEORGIA 30303-8960

September 22, 2008

Mr. Patrick Tyndall  
Environmental Program Manager  
Federal Highway Administration  
1835 Assembly Street, Suite 1270  
Columbia, SC 29201-2430

Subject: **EPA Review Comments on  
Final Environmental Impact Statement (FEIS)  
Interstate 73: From I-95 to North Carolina  
CEQ No. 20080317**

Dear Mr. Tyndall:

The U.S. Environmental Protection Agency (U.S. EPA) Region 4 reviewed the subject Final Environmental Impact Statement (FEIS) pursuant to Section 309 of the Clean Air Act, and Section 102 (2)(C) of the National Environmental Policy Act (NEPA). EPA appreciates your coordination with us throughout the NEPA process and your responses to EPA's comments and concerns regarding the project. The purpose of this letter is to provide you with EPA's remaining comments on the project.

The FEIS assesses the potential environmental impacts of the no-build alternative and build alternatives for I-73. The EIS identifies Alternative 2 as the Preferred Alternative selected by FHWA and SCDOT. Alternative 2 takes into consideration community concerns in addition to environmental parameters.

Based on EPA's review of the FEIS, environmental concerns remain. Specifically, EPA remains concerned about the proposed approach to Section 404 of the Clean Water Act (CWA) permitting, particularly regarding the compensatory mitigation plan. The *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*, published in the Federal Register on April 10, 2008, which amended 33 CFR parts 325 and 332, and 40 CFR part 230, established detailed requirements for project-specific compensatory mitigation plans for projects such as I-73.

The Rule requires a detailed mitigation plan prior to issuance of a Section 404 permit. We are unclear as to how a "provisional" Section 404 permit meets the requirements of the Rule, since provisional Section 404 permits are not addressed in the Rule. The validity of a Section 404 permit issuance (provisional or otherwise) that does not comply with the Rule is questionable. The proposed establishment of a MOA that promotes the establishment of a fund for mitigation but with no specific identified mitigation actions does not appear to be in compliance with the requirements of the Rule.

EPA expressed concerns about this approach when it was first discussed at ACT meetings, and we continue to have concerns. The Rule states that the preferred approach for compensatory mitigation is to use mitigation banks, with a less desirable substitute being established in-lieu-fee mitigation programs. Because applicant-sponsored compensatory mitigation has historically shown less success, this approach ranks below other options. Thus, we believe that commercial mitigation banks should not be eliminated for consideration for providing at least some of the mitigation for I-73. We discussed this with you at ACT meetings.

In summary, we see no advantages to issuance of a "provisional" Section 404 permit with no definite compensatory mitigation plan. We strongly recommend that SCDOT not apply for the Section 404 permit until a detailed compensatory mitigation plan, that is fully compliant with the Rule, is developed.

If the compensatory mitigation plan needs to be amended in the future, there are provisions in the Rule to address changes. A Section 404 permit based on a specific mitigation plan could also be modified as construction of I-73 and implementation of the mitigation plan are fully funded. Any other approach appears premature, inconsistent with the Rule, and may result in EPA comments on the Public Notice for the Section 404 permit for the project. If you have questions about Section 404 issues, please contact Bob Lord of the EPA Region 4 Water Division at (404) 562-9408.

In addition to Section 404 permitting and mitigation concerns, we note that the construction methodology, which could affect wetlands, has not been specified yet. The FEIS also states that the project would require additional NEPA analysis if the highway is constructed as a toll road, since the current NEPA analysis evaluates it as a non-tolled facility. In addition, as documented in the FEIS, project noise may impact eight residences and one business. Noise impacts should be minimized, and unavoidable noise impacts should be reasonably mitigated.

Thank you for the opportunity to comment on this project, and for your continuing coordination with EPA. Please send us a copy of the Record of Decision (ROD) for our files. If we may be of further assistance, please contact Ramona McConney of my staff at (404) 562-9615.

Sincerely,

A handwritten signature in black ink, appearing to read "Heinz Mueller", with a long horizontal flourish extending to the right.

Heinz J. Mueller, Chief  
NEPA Program Office  
Office of Policy and Management

cc: Mitchell Metts, P.E., SCDOT